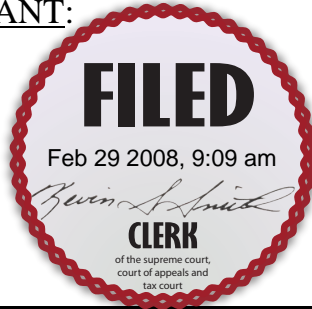


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.

ATTORNEY FOR APPELLANT:

JOE KEITH LEWIS
Marion, Indiana



ATTORNEY FOR APPELLEE:

KYLE C. PERSINGER
Spitzer Herriman Stephenson
Holderead Musser & Conner, LLP
Marion, Indiana

**IN THE
COURT OF APPEALS OF INDIANA**

HELEN MARKS,

Appellant-Respondent,

vs.

RAYMOND C. MARKS,

Appellee-Petitioner.

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No. 27A02-0708-CV-701

APPEAL FROM THE GRANT SUPERIOR COURT
The Honorable Randall L. Johnson, Judge
Cause No. 27D02-0610-DR-168

February 29, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

FRIEDLANDER, Judge

Helen Marks appeals the trial court's property disposition arising from the dissolution of her marriage to Raymond Marks. Helen raises the following restated issues:

1. Did the trial court properly value a timeshare in a condominium in Orlando, Florida and the property located at 1828 S. Washington Street in Marion, Indiana?
2. Did the trial court properly include a lump-sum Social Security disability benefit payment awarded to Helen in the marital estate?

We affirm.

Helen and Raymond were married on February 2, 1991. They separated on October 19, 2006, and the next day, Raymond filed a petition for dissolution of the marriage.

The trial court held a final hearing on Raymond's petition on February 28, 2007. During the hearing, Raymond testified that he and Helen owned a timeshare in a condominium in Orlando, Florida. He stated that the timeshare was worth \$25,000. Helen disputed this value but did not present any evidence as to the actual value of the timeshare.

Testimony at the hearing also indicated that Helen owned property located at 1828 S. Washington Street in Marion, Indiana. The Grant County assessor valued this property at \$31,900. Raymond testified that he thought the property was worth about half of its assessed value due to the poor state of the buildings on the property. Raymond stated that Helen had been delinquent in paying taxes on the property and that it had been sold at a tax sale. Helen's testimony suggested that she still had time to redeem the property

from the tax sale. She did not present any evidence as to the value of the Washington Street property.

While she was married to Raymond, Helen applied for Social Security disability benefits. After Helen and Raymond separated, Helen was awarded future Social Security disability benefits of \$1,100 per month and a lump-sum payment for past disability benefits dating back to July 2003. On the day of the final hearing, Helen's counsel filed two documents with the trial court. The first document, titled Marital Information, Assets, Values and Debts, included Helen's lump-sum payment for back Social Security disability benefits in the marital estate and estimated its value at approximately \$30,000. The second document, a proposed dissolution decree and property settlement, proposed that the trial court award the full value of the back Social Security disability benefits to Helen. During the final hearing, the parties stipulated that the value of Helen's back Social Security disability benefits was \$30,000. In her closing statement, Helen's counsel argued that the trial court should award Helen the full value of the lump-sum payment she would receive for back Social Security disability benefits.

The trial court issued its Decree of Dissolution of Marriage on July 16, 2007. In the decree, the trial court awarded the timeshare condominium and the Washington Street property to Helen. It valued the timeshare condominium at \$25,000 and the Washington Street property at \$15,000. The trial court included Helen's lump-sum payment for back Social Security disability benefits in the marital pot and valued the payment at \$30,000. It specified that Raymond should receive \$9,310.68 of the lump-sum payment, while Helen was awarded the remaining \$20,689.32. This appeal ensued.

1.

Helen first argues that the trial court abused its discretion when it valued the timeshare condominium at \$25,000 and the Washington Street property at \$15,000. She contends that the trial court could not properly determine the value of these properties without the aid of expert testimony and that this ultimately led to an unequal division of the marital estate. Because there was no expert testimony, Helen asserts the trial court's property disposition should be reversed and this case remanded for further proceedings.

"The trial court has broad discretion in determining the value of property in a dissolution action, and its valuation will not be disturbed absent an abuse of that discretion." *England v. England*, 865 N.E.2d 644, 650-51 (Ind. Ct. App. 2007), *trans. denied*. "The trial court's discretion is not abused if there is sufficient evidence and reasonable inferences therefrom to support the result." *Id.* at 651.

Here, Helen did not present any evidence as to the value of the timeshare condominium or the Washington Street property. The only evidence as to the value of these properties came from Raymond's testimony. "The burden of producing evidence as to the value of marital assets is upon the parties to the dissolution proceeding." *Id.* We have previously recognized that:

[A]ny party who fails to introduce evidence as to the specific value of the marital property at the dissolution hearing is estopped from appealing the distribution on the ground of trial court abuse of discretion based on that absence of evidence. This rule places the burden of producing evidence as to the value of the marital property where it belongs on the parties, rather than on the trial court.

Perkins v. Harding, 836 N.E.2d 295, 301 (Ind. Ct. App. 2005) (quoting *In re Marriage of Church*, 424 N.E.2d 1078, 1081-82 (Ind. Ct. App. 1981)). Having failed to introduce evidence of the value of the timeshare condominium or the Washington Street property, Helen is estopped from appealing the trial court's distribution of these two items. See *Galloway v. Galloway*, 855 N.E.2d 302 (Ind. Ct. App. 2006) (holding that appellant was estopped from appealing the trial court's distribution of the marital estate where he failed to introduce evidence of the value of a pension and an auction business).

2.

Helen next argues that the trial court abused its discretion when it determined that her lump-sum payment for back Social Security disability benefits was marital property subject to division. In Indiana, all marital property goes into the marital pot for division, whether it was owned by either spouse prior to the marriage, acquired by either spouse after the marriage and prior to final separation of the parties, or acquired by their joint efforts. Ind. Code Ann. § 31-15-7-4 (West, PREMISE through 2007 1st Regular Sess.); *Hill v. Hill*, 863 N.E.2d 456 (Ind. Ct. App. 2007). Helen contends that her lump-sum payment for back Social Security disability benefits was not part of the marital estate and not subject to division because it was acquired after her final separation with Raymond.

Even if we were to assume that the trial court erred by including Helen's lump-sum payment for back Social Security disability benefits in the marital estate, Helen invited this error. "The doctrine of invited error is grounded in estoppel and precludes a party from taking advantage of an error that he or she commits, invites, or which is the natural consequence of his or her own neglect or misconduct." *Balicki v. Balicki*, 837 N.E.2d

532, 541 (Ind. Ct. App. 2005), *trans. denied*. Here, Helen indicated in her Marital Information, Assets, Values and Debts that her lump-sum payment for back Social Security disability benefits was a marital asset with an approximate value of \$30,000. In her proposed dissolution decree, Helen suggested that her back Social Security disability benefits were a marital asset subject to division when she proposed that the trial court should award these funds to her. At the final hearing, Helen's counsel stipulated to the value of Helen's lump-sum payment for back Social Security disability benefits and argued that she should be awarded the full value of this payment. This also indicates that the lump-sum payment was a part of the marital estate subject to division. Because Helen identified her lump-sum payment for back Social Security disability benefits as a marital asset, the trial court was entitled to rely on this representation. Given Helen's actions, she cannot seek reversal or reconsideration of the property distribution with respect to her lump-sum payment for back Social Security disability benefits. *See id.* (holding that appellant could not seek reversal of the property distribution with respect to two IRAs that appellant claimed were funded after the separation of the parties because appellant's proposed division of the marital property listed the IRAs as a marital asset).

Judgment affirmed.

MATHIAS, J., and ROBB, J., concur.